



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CRL.R.C.NO.431 OF 2015

AND

M.P.NO.2 OF 2015

M.Beula Rani

.. Petitioner

Vs.

M/s.Bloom Electronics (P) Ltd.,
Represented by its Accountant
M. Raju

.. Respondent

Prayer : Petition filed under Section 397 & 401 of the Criminal Procedure Code, to call for the records in C.A.No.114 of 2013 on the file of learned V Additional District Sessions Judge, Coimbatore and set aside the order dated 09.02.2015 confirming the conviction and the sentence passed by the learned Judicial Magistrate, Fast Track Court, Level-II, Coimbatore in STC.No.201 of 2012 (STC.670/09-JM No.7, Coimbatore) by a judgment dated 29.07.2013.

For Petitioner : Mr.H.Rajasekar

For Respondent : Mr.R.Babu

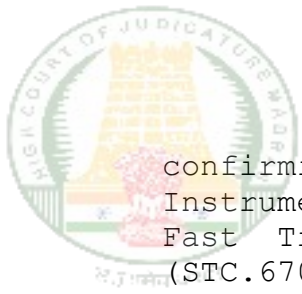
O R D E R

The matter is heard through "Video Conference".

2. Convicted accused is the revision petitioner herein.

3. The respondent herein filed complaint under Section 200 of Cr.P.C., to prosecute the accused for the offence under Section 138 of Negotiable Instruments Act.

4. This criminal revision petition is filed against the order passed by V Additional District and Sessions Court, Coimbatore in C.A.No.114 of 2013 by an order dated 09.02.2015,



confirming the conviction under Section 138 of Negotiable Instruments Act rendered by the learned Judicial Magistrate, Fast Track Court, Level-II, Coimbatore, STC.No.201 of 2012 (STC.670/09-JM No.7, Coimbatore) dated 29.07.2013 and affirming the sentence of Simple imprisonment for six months and a fine of Rs.2,000/- in default, shall undergo simple imprisonment for two months.

5. The brief facts of this case is that the petitioner is a customer of the respondent who is a dealer in computer accessories having credit dealings with the respondent. As per the accounts maintained by the respondent in the regular course of business the petitioner is liable to pay a sum of Rs.6,30,458/-. As such the petitioner has issued four cheques of Rs.50,000/- each totalling a sum of Rs.2,00,000/- and the respondent presented the cheques on 04.06.2009 which was returned by the drawer's bank due to insufficient funds in the drawer's account. The respondent issued the statutory notice on 02.07.2009 and sent a reply contending that at the time of purchase of computer accessories, the petitioner used to give cheques and get them back after payment of the amount. The amount for the cheque was already paid to the collection agent of the respondent company and when the cheque was asked to be returned, it was told by the respondent company that the same would be returned the cheques was issued as security and was not intended to be deposited in bank.

6. The respondent was examined as the sole witness as P.W.1 and marked Exs.P1 to P16. The petitioner examined herself as D.W.1. After going through the evidence on record the learned trial Magistrate held the petitioner guilty as complained of under Section 138 of Negotiable Instruments Act and sentenced the petitioner and the appellate Court also maintained the conviction and the sentence and hence, the revision.

7. The learned counsel for the revision petitioner would contend that the trial Court has committed an error in giving the statutory presumption in favour of the respondent.

8. Heard, the learned counsel for the respondent.

9. On perusal of the documents filed by the respondent, it is seen that the minutes extract and authorisation letter are Ex.P1. The ledger account of the complainant company for the period 01.04.2009 to 31.03.2009 is Ex.P2 and another ledger account of the complainant company for the period 01.04.2008 to 31.03.2009. The petitioner has issued four cheques of Rs.50,000/- each totalling a sum of Rs.2,00,000/- of IDBI Bank



is Exs.P4 to P7. Return memos dated 04.06.2009 are marked as Exs.P8 to P11. Debit advice is marked as Ex.P12, Legal notice is marked as Ex.P13, Acknowledgment is marked as Ex.P14, Reply notice is marked as Ex.P15 and another legal notice is marked as Ex.P16. With this complainant side evidence was closed.

10. During the cross examination of P.W.1, there is a signature in the cheque and issuance of cheque by the revision petitioner are not disputed and hence, both the Courts below has rightly come to the conclusion that the respondent/private complainant is entitled to statutory presumption under Section 138 of Negotiable Instruments Act including the existence of legally enforceable debt.

11. The suggestive case of the defence is that it is an usual process to give cheques and get them back after payment of the amount and the cheques would be returned to the accused. However, even after payment of cash, the petition-cheque was not returned and when it was requested, they said that the same would be returned afterwards. However, without doing so, notice has been sent by complainant company which returned in filing by case under Negotiable Instruments Act.

12. Admittedly, D.W.1, would state that the cheque was issued for the proprietrix of the complainant company, it was duly signed and these facts are not disputed. Exs.P2 & P3 are the ledger books pertaining to the period 01.04.2009 to 31.03.2009 and 01.04.2008 to 31.03.2009, to show that the respondent/accused has taken goods from the private complainant and in due of Rs.2,00,000/- and hence, the existing legally enforceable debt is established and hence, both the Courts below has rejected the suggestive case of the defence.

13. After perusing the evidence of D.W.1, though, they says that they have paid the amount, no receipt has been found.

14. On the contrary, the private complainant has filed Exs.P2 and P3 to show the transaction between the parties and the amount due by the revision petitioner/accused.

15. It is mentioned in the regular course of business within Section 35 of Indian Evidence Act and hence, I find that the private complainant has proved the transaction between the parties and as per Exs.P2 and P3, it is clearly demonstrates the pre-existence of legal enforceable debt and cheques have been issued and the cheques have been issued from the account of the revision petitioner/accused and signature has not been disputed and hence, I find that on the cheques having been returned as insufficient funds, as could be seen from Ex.P10 & Ex.P11/Return



memos and legal notice have been issued. The conviction passed by both the Courts below does not warrant any interference. Accordingly, the order of conviction is hereby confirmed.

16. On the point of quantum of sentence, both the parties heard.

17. Taking into consideration, the money involved in the amount, I find that the period of sentence be reduced from six months to three months and the fine amount as awarded by the trial Court is hereby confirmed.

18. Accordingly, the criminal revision case is partly allowed to the limited extent as indicated above. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

AT

To

1. The V Additional District Sessions Judge,
Coimbatore.

2. The Judicial Magistrate,
Fast Track Court, Level-II,
Coimbatore.

+1cc to M/s.B.Vijayakumar, Advocate, S.R.No.55900

Cr1.R.C.No.431 of 2015 and
M.P.No.2 of 2015

KG(CO)
RLP(02/12/2021)